

### Remarks

In view of the above amendments and the following remarks, reconsideration of the outstanding office action is respectfully requested.

The rejection of claims 1, 8, 9, and 11 under 35 U.S.C. § 102(b) as anticipated by U.S. Patent No. 6,346,193 to Bauer ("Bauer") is respectfully traversed in view of the above amendments. Bauer teaches a boom system and its use at an inlet of a reservoir. The U.S. Patent and Trademark Office ("PTO") has taken the position that Bauer teaches first and second support systems, citing to several anchoring systems. Applicant respectfully disagrees. The anchoring systems of Bauer cannot be support systems according to claim 1 because the anchoring systems are not (i) a floating support system comprising a plurality of flotation units, (ii) a permanent or semi-permanent structure comprising a plurality of pilings and one or more horizontal members spanning between adjacent pilings, or (iii) a combination of (i) and (ii), as required by claim 1 of the present invention. Because Bauer only teaches the use of a single support system, Bauer is deficient in two respects. First, Bauer fails to teach or suggest using a second support system connected to a distinct position on the boom curtain. Second, Bauer fails to teach or suggest using first *and second* support systems to "maintain at least one of the upper and lower curtain portions in a substantially sloped arrangement upon introduction of the boom into the body of water." Because Bauer fails to teach or suggest these claim elements, the rejection of claims 1, 8, 9, and 11 as anticipated by Bauer is improper and should be withdrawn.

The rejection of claims 1-3, 6, 8, 9, 12 and 13 under 35 U.S.C. § 102(e) as anticipated by U.S. Patent No. 6,485,229 to Gunderson, III et al. ("Gunderson") is respectfully traversed. Gunderson teaches a boom that contains a support system, curtain, anchoring system, and gas injection system, as well as various uses of such booms. The PTO has taken the position that Gunderson teaches first and second support systems, citing to the flotation billets as one and the anchoring system as another. Applicant respectfully disagrees. The anchoring system of Gunderson cannot be a support system according to claim 1 because the anchoring system is not (i) a floating support system comprising a plurality of flotation units, (ii) a permanent or semi-permanent structure comprising a plurality of pilings and one or more horizontal members spanning between adjacent pilings, or (iii) a combination of (i) and (ii), as required by claim 1 of the present invention. Because Gunderson only teaches the use of a single support system, Gunderson is deficient in two respects. First, Gunderson fails to teach or suggest using a second support system connected to a distinct position on the boom curtain. Second, Gunderson fails to teach or suggest using first *and second* support

R849799.4

systems to "maintain at least one of the upper and lower curtain portions in a substantially sloped arrangement upon introduction of the boom into the body of water." Because Gunderson fails to teach or suggest either of these claim elements, the rejection of claims 1-3, 6, 8, 9, 12, and 13 as anticipated by Gunderson is improper and should be withdrawn.

The rejection of claim 15 under 35 U.S.C. § 103(a) for obviousness over Bauer is respectfully traversed. Because Bauer is deficient with respect to the above-noted limitations of claim 1 and claim 15 depends from claim 1, applicant submits that Bauer cannot have rendered claim 15 obvious. For this reason, the rejection of claim 15 is improper and should be withdrawn.

The rejection of claims 15, 16, 17, and 19 under 35 U.S.C. § 103(a) for obviousness over Bauer in view of Gunderson is respectfully traversed. The teachings of Bauer and Gunderson are set forth above. Because both Bauer and Gunderson are similarly deficient with respect to the above-noted limitations of claim 1, the combination of these references is likewise deficient with respect to claim 1. Because claims 15, 16, 17, and 19 depend from claim 1, the rejection of claims 15, 16, 17 and 19 is improper and should therefore be withdrawn.


The rejection of claims 15-20 under 35 U.S.C. § 103(a) for obviousness over Gunderson is respectfully traversed. The teachings of Gunderson are set forth above. Because Gunderson is deficient with respect to the above-noted limitations of claim 1 and claims 15-20 depend from claim 1, the rejection of claims 15-20 is improper and should therefore be withdrawn.

The objection to claims 4, 5, 7, 10, and 14 as depending upon a rejected base claim is respectfully traversed in view of the above remarks.

In view of all of the foregoing, applicant submits that the present application is in condition for allowance and such allowance is earnestly solicited.

Respectfully submitted,

Dated: September 6, 2005

  
Edwin V. Merkel

Registration No. 40,087

NIXON PEABODY LLP  
Clinton Square, P.O. Box 31051  
Rochester, New York 14603-1051  
Telephone: (585) 263-1128  
Facsimile: (585) 263-1600

CERTIFICATE OF MAILING OR TRANSMISSION [37 CFR 1.8(a)]

I hereby certify that this correspondence is being transmitted by facsimile on the date shown below to the United States Patent and Trademark Office at (571) 273-8300.

September 6, 2005  
Date

  
Edwin V. Merkel